

EXHIBIT A

HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

vs.

MOTOROLA, INC., and MOTOROLA
MOBILITY, INC.,

Defendants

Case No. 2-10-cv-01823-JLR

MICROSOFT CORPORATION'S
INITIAL DISCLOSURES PURSUANT
TO FEDERAL RULE OF CIVIL
PROCEDURE 26(a)(1)(A)

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, Plaintiff Microsoft Corporation ("Microsoft") hereby makes its initial disclosures. Microsoft makes the following initial disclosures based on the information and materials reasonably available to it. Microsoft reserves the right to supplement its initial disclosures based on information or evidence discovered, offered, or introduced later in this action. Information subject to the attorney-client privilege, work product doctrine, or any other applicable privilege has not been disclosed.

A. Rule 26(a)(1)(A)(i).

1. Current and former employees of Microsoft include, but are not limited to:

MICROSOFT CORPORATION'S INITIAL
DISCLOSURES PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 26(a)(1)(A) - 1

LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL., (206) 623-1700 FAX, (206) 623-8717

1 a. Horacio Gutierrez
2 Microsoft Corporation
3 One Microsoft Way
4 Redmond, WA 98052

5 Mr. Gutierrez is Microsoft's Corporate Vice President and Deputy
6 General Counsel, Intellectual Property and Licensing, and may have
7 knowledge regarding Motorola's license demand letters dated October
8 21, 2010 and October 29, 2010. Mr. Gutierrez may be contacted
9 through undersigned counsel.

10 b. Bart Eppenauer
11 Microsoft Corporation
12 One Microsoft Way
13 Redmond, WA 98052

14 Mr. Eppenauer is Microsoft's Chief Patent Counsel and may have
15 knowledge regarding the applicable standards and licensing of
16 standards-related patents. Mr. Eppenauer may be contacted through
17 undersigned counsel.

18 2. Current and former employees of Motorola, Inc., Motorola Mobility, Inc., and
19 General Instrument Corporation likely to have discoverable information on
20 subjects including, but not limited to, the following: Motorola's October 21,
21 2010 and October 29, 2010 demand letters to Microsoft; Motorola's
22 participation in the adoption and implementation of the WLAN/802.11 and/or
23 H.264 standards; licensing terms offered by Motorola to persons or entities for
24 licenses to Motorola's patented technology it claims is essential to
25 implementation of the WLAN and/or H.264 standards; terms upon which
Microsoft has accepted licenses from other entities for patented technology
necessary for implementation of the WLAN and/or H.264 standards;
development of Motorola's allegedly "essential" patents; and Motorola's efforts
to protect its allegedly "essential" patents from infringement. Individuals in this
category who are likely to have discoverable information include, but are not
limited to:

a. Kirk Dailey
c/o Summit Law Group PLLC

b. Ajay Luthra
c/o Summit Law Group PLLC

3. All individuals likely to have discoverable information listed in Defendants'
Initial Disclosures.

4. The following individuals are likely to have discoverable information, or otherwise are likely to know relevant facts about the standards at issue in this lawsuit, and/or Defendants' commitments to make licenses available on RAND terms:

- a. IEEE-SA Standards Board
445 Hoes Lane
Piscataway, NJ 08854
Phone: (732) 981-0060
- b. International Telecommunications Union
Place des Nations
1211 Geneva 20
Switzerland
Phone: 41 22 730 5111

Microsoft has not yet identified its testifying expert witnesses but will provide information consistent with the expert witness disclosure deadlines established by the Court and the Federal Rules.

By way of further disclosure, Microsoft also refers to those persons identified in any documents produced or referenced in conjunction with these Initial Disclosures, and to any witness identified in any depositions or answers to discovery by the parties.

B. Rule 26(a)(1)(A)(ii).

The documents identified in response to Rule 26(a)(1)(A)(ii) fall within the following categories:

1. Defendants' October 21, 2010 demand letter.
2. Defendants' October 29, 2010 demand letter.
3. Defendants' Letters of Assurance to the IEEE-SA with respect to the IEEE-SA's adoption and implementation of the WLAN/802.11 standard.
4. Defendants' Patent Statement and Licensing Declarations submitted to the ITU-T with respect to the ITU-T's adoption and implementation of the H.264 standard.

Microsoft also refers to those documents identified in the Initial Disclosures made by Defendants, and to any document identified in any depositions or answers to discovery by the parties.

C. Rule 26(a)(1)(A)(iii).

Microsoft claims its damages arising out of Defendants' breaches of their contractual commitments to the IEEE-SA, ITU-T, and Microsoft, as well as Microsoft's damages arising out of its reliance on Defendants' promise that they would license any essential patents on RAND terms and conditions. Microsoft also seeks injunctive and declaratory relief. Without the benefit of discovery, Microsoft is not able at this time to provide a computation of damages, but will seek all damages available under law. Microsoft's damages include those that it has suffered as a result of defending against Defendants' actions in the District Court for the Western District of Wisconsin and before the ITC to enjoin or exclude Microsoft from practicing the WLAN/802.11 and H.264 standards.

D. Rule 26(a)(1)(A)(iv).

Microsoft is unaware of any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment on Microsoft's claims in this action, or to indemnify or reimburse for payments made to satisfy the judgment.

E. Additional Reservation of Rights.

Microsoft's disclosures are based upon a good-faith effort to obtain information reasonably available to it at this time. At this early stage, it is not possible to identify all individuals and documents, data, compilations, or other tangible things that may have some relevance to the disputed facts. Microsoft reserves the right to supplement its persons and document lists as additional information and materials come to light pursuant to Rule 26(e).

1 DATED this 7th day of February, 2011.

2 DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

3
4 By /s/ Christopher Wion
5 Arthur W. Harrigan, Jr., WSBA #1751
6 Christopher Wion, WSBA #33207
Shane P. Cramer, WSBA #35099

7 T. Andrew Culbert
8 David E. Killough
9 MICROSOFT CORPORATION
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10 Redmond, WA 98052
Phone: 425-882-8080
11 Fax: 425-869-1327

12 John W. McBride, of Counsel
13 David T. Pritikin, of Counsel
Richard A. Cederoth, of Counsel
14 Douglas I. Lewis, of Counsel
SIDLEY AUSTIN LLP
One South Dearborn
15 Chicago, IL 60603
Phone: 312-853-7000
16 Fax: 312-853-7036

17 Brian R. Nester, of Counsel
18 Kevin C. Wheeler, of Counsel
SIDLEY AUSTIN LLP
19 1501 K Street NW
Washington, DC 20005
20 Telephone: 202-736-8000
Fax: 202-736-8711

21 Counsel for Plaintiff Microsoft Corp.
22
23
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25

EXHIBIT B

HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,
Plaintiff,
v.
MOTOROLA, INC., et al.,
Defendants.

Case No. 2-10-cv-1823-JLR

MICROSOFT CORPORATION'S FIRST
SUPPLEMENTAL DISCLOSURE OF
WITNESSES

MOTOROLA MOBILITY, INC., et al.,
Plaintiffs,
v.
MICROSOFT CORPORATION,
Defendant.

Plaintiff Microsoft Corporation ("Microsoft"), through counsel undersigned, makes the following supplemental witness designations. Microsoft makes these disclosures based on the information and materials reasonably available to it. Microsoft reserves the right to further supplement these disclosures based on information or evidence discovered, offered, or introduced later in this action.

A. Rule 26(a)(1)(A)(i).

1. Current and former employees of Microsoft include, but are not limited to:

MICROSOFT CORPORATION'S FIRST
SUPPLEMENTAL DISCLOSURE OF
WITNESSES - 1

LAW OFFICES
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1
2 a. Garrett Glanz
3 Microsoft Corporation
4 One Microsoft Way
5 Redmond, WA 98052

6 Mr. Glanz is Microsoft's General Manager, Intellectual Property and
7 Licensing, and may have knowledge regarding Microsoft's video codec
8 licensing, licensing royalties, and the parties' participation in patent
9 pools, including, without limitation, the parties' participation in the
10 formation of the MPEG LA H.264 patent pool. Mr. Glanz may be
11 contacted through undersigned counsel.

12 b. Gary Sullivan
13 Microsoft Corporation
14 One Microsoft Way
15 Redmond, WA 98052

16 Mr. Sullivan is a software design engineer at Microsoft. He has
17 knowledge regarding the development of the H.264/AVC video coding
18 standard, and the parties' participation in the development of the
19 standard. Mr. Sullivan may be contacted through the undersigned
20 counsel.

21 2. Other potentially knowledgeable individuals include:

22 a. Jennifer Ochs
23 Director of Intellectual Property Litigation
24 Marvell Semiconductor, Inc.
25 5488 Marvell Lane
Santa Clara, CA 95054

Ms. Ochs may be called to testify regarding Marvell Semiconductor's
802.11 chip, Marvell's requests to license Motorola's wireless
communication patents, and the subsequent discussions between Marvell
and Motorola relating thereto.

b. Allen Lo
Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
(650) 253-0000

1 Mr. Lo may be called to testify regarding Google's acquisition of
2 Motorola; Google's enforcement of Motorola's standard essential
3 patents; his letter of February 8, 2012 to the IEEE; Google's policies
4 with respect to the enforcement of standard essential patents; and any
other information he may have that is relevant to the claims and issues in
this action.

5 c. Scott Peterson
6 Google Inc.
7 1600 Amphitheatre Parkway
Mountain View, CA 94043
(650) 253-0000

8 Mr. Peterson may be called to testify regarding Google's participation in
9 various standard setting organizations, such as ETSI; Google's policies
10 with respect to the enforcement of standard essential patents; and any
other information he may have that is relevant to the claims and issues in
this action.

11 d. Corporate Representative
12 Google Inc.
13 1600 Amphitheatre Parkway
Mountain View, CA 94043
14 (650) 253-0000

15 A corporate representative from Google may be called to testify
16 regarding Google's acquisition of Motorola Mobility; Google's
valuation of Motorola Mobility's 802.11 and H.264 standard essential
17 patents; Android; Google's intellectual property rights policies and
licensing practices; and Google's obligations under its MPEG LA AVC
18 Patent Portfolio License.

19 e. Corporate Representative
20 CRA International, Inc.
c/o Registered Agent
21 Illinois Corporation Service
801 Adlai Stevenson Drive
22 Springfield, IL 62703

23 A corporate representative from CRA may be called to testify regarding
24 analysis CRA's predecessor, Intecap, performed for Motorola regarding
the potential licensing of Motorola's patents essential to the 802.11
25 standard.

3. Microsoft reserves the right to call all necessary records custodians.

4. Microsoft reserves the right to call any witness deposed in this action or identified by any of the defendants in their initial or supplemental witness disclosures.

B. Additional Reservation of Rights.

Microsoft's disclosures are based upon a good-faith effort to obtain information reasonably available to it at this time. Microsoft reserves the right to supplement its disclosure of witnesses as additional information and materials come to light pursuant to Rule 26(e).

DATED this 22nd day of June, 2012.

DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

By /s/ Shane P. Cramer
Arthur W. Harrigan, Jr., WSBA #1751
Christopher Wion, WSBA #33207
Shane P. Cramer, WSBA #35099

T. Andrew Culbert
David E. Killough
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David T. Pritikin, of Counsel
Richard A. Cederoth, of Counsel
Douglas I. Lewis, of Counsel
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Fax: 202-736-8711

Counsel for Plaintiff Microsoft Corp.

CERTIFICATE OF SERVICE

I, Linda Bledsoe, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.
2. On the 22nd day of June, 2012, I caused the preceding document to be served on counsel of record in the following manner:

Attorneys for Motorola Solutions, Inc., and Motorola Mobility, Inc.:

Ralph Palumbo, WSBA #04751
 Philip S. McCune, WSBA #21081
 Lynn M. Engel, WSBA #21934
 Summit Law Group
 315 Fifth Ave. South, Suite 1000
 Seattle, WA 98104-2682
 Telephone: 206-676-7000
 Email: Summit1823@summitlaw.com

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Steven Pepe (*pro hac vice*)
 Jesse J. Jenner (*pro hac vice*)
 Ropes & Gray LLP
 1211 Avenue of the Americas
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 Email: steven.pepe@ropesgray.com
 Email: jesse.jenner@ropesgray.com

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Norman H. Beamer (*pro hac vice*)
 Ropes & Gray LLP
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 East Palo Alto, CA 94303-2284
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1 Paul M. Schoenhard (*pro hac vice*)
2 Ropes & Gray LLP
3 One Metro Center
4 700 12th Street NW, Suite 900
5 Washington, DC 20005-3948
6 Telephone: (202) 508-4693
7 Email: Paul.schoenhard@ropesgray.com

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8 DATED this 22nd day of June, 2012.

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LINDA BLEDSOE

EXHIBIT C

HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

MOTOROLA, INC., et al.,

Defendants.

Case No. 2-10-cv-1823-JLR

MICROSOFT CORPORATION'S
SECOND SUPPLEMENTAL
DISCLOSURE OF WITNESSES

MOTOROLA MOBILITY, INC., et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

Plaintiff Microsoft Corporation ("Microsoft"), through counsel undersigned, makes the following supplemental witness designations. Microsoft makes these disclosures based on the information and materials reasonably available to it. Microsoft reserves the right to further supplement these disclosures based on information or evidence discovered, offered, or introduced later in this action.

MICROSOFT CORPORATION'S SECOND
SUPPLEMENTAL DISCLOSURE OF
WITNESSES - 1

LAW OFFICES
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999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL, (206) 623-1700 FAX, (206) 623-8717

A. Rule 26(a)(1)(A)(i).

1. Corporate Representative
Marvell Semiconductor, Inc.
5488 Marvell Lane
Santa Clara, CA 95054

A corporate representative from Marvell may be called to testify regarding Marvell Semiconductor's 802.11 chip, Marvell's requests to license Motorola's wireless communication patents, and the subsequent discussions between Marvell and Motorola relating thereto.

2. Corporate Representative
MPEG LA, LLC
6312 S Fiddlers Green Circle, Suite 400E
Greenwood Village, Colorado 80111
(303) 331 1880

A representative from MPEG LA may be called to testify regarding its video coding patent pools, the parties' participation in the development of those pools, the purposes of the pools, MPEG LA's pool license rates, and obligations of licensees and their affiliates, such as Google and Motorola Mobility, under the terms of the MPEG LA standard patent license.

3. Larry Horn
MPEG LA, LLC
6312 S Fiddlers Green Circle, Suite 400E
Greenwood Village, Colorado 80111
(303) 331 1880

Mr. Horn may be called to testify regarding MPEG LA's video coding patent pools, the parties' participation in the development of those pools, the purposes of the pools, MPEG LA's pool license rates, and obligations of licensees and their affiliates, such as Google and Motorola Mobility, under the terms of the MPEG LA standard patent license.

4. Gene Eggleston
Motorola Mobility, Inc.
May be contacted through Counsel for Defendants

Mr. Eggleston may be called to testify regarding Defendants' licensing discussions and other matters relating to Marvell's request for a license to Motorola's 802.11 SEPs.

5. Corporate Representative
Via Licensing
c/o Thomas Carlson
Rogers Joseph O'Donnell
311 California Street
San Francisco, CA 94104
(415) 956-2828

A representative from Via Licensing may be called to testify regarding its 802.11 and H.264 patent pools, the parties' participation in the development of those pools, the purposes of the pools, Via's pool license rates, and the patents in the pools.

B. Additional Reservation of Rights.

Microsoft's disclosures are based upon a good-faith effort to obtain information reasonably available to it at this time. Microsoft reserves the right to supplement its disclosure of witnesses as additional information and materials come to light pursuant to Rule 26(e).

DATED this 18th day of July, 2012.

DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

By s/Shane P. Cramer
Arthur W. Harrigan, Jr., WSBA #1751
Christopher Wion, WSBA #33207
Shane P. Cramer, WSBA #35099

T. Andrew Culbert
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1 David T. Pritikin
2 Richard A. Cederoth
3 Constantine L. Trela, Jr.
4 William H. Baumgartner, Jr.
5 Ellen S. Robbins
6 Douglas I. Lewis
7 David C. Giardina
8 John W. McBride
9 David Greenfield

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13 Chicago, IL 60603
14 Phone: 312-853-7000
15 Fax: 312-853-7036

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17 Carter G. Phillips
18 Brian R. Nester

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20 SIDLEY AUSTIN LLP
21 1501 K Street NW
22 Washington, DC 20005
23 Telephone: 202-736-8000
24 Fax: 202-736-8711

25
Counsel for Microsoft Corp.

MICROSOFT CORPORATION'S SECOND
SUPPLEMENTAL DISCLOSURE OF
WITNESSES - 4

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TEL. (206) 623-1700 FAX. (206) 623-8717

CERTIFICATE OF SERVICE

I, Susie Clifford, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.
2. On the 18th day of July, 2012, I caused the preceding document to be served on counsel of record in the following manner:

Attorneys for Motorola Solutions, Inc., and Motorola Mobility, Inc.:

Ralph Palumbo, WSBA #04751
Philip S. McCune, WSBA #21081
Lynn M. Engel, WSBA #21934
Summit Law Group
315 Fifth Ave. South, Suite 1000
Seattle, WA 98104-2682
Telephone: 206-676-7000
Email: Summit1823@summitlaw.com

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____ Facsimile
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Steven Pepe (*pro hac vice*)
Jesse J. Jenner (*pro hac vice*)
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Norman H. Beamer (*pro hac vice*)
Ropes & Gray LLP
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MICROSOFT CORPORATION'S SECOND
SUPPLEMENTAL DISCLOSURE OF
WITNESSES - 5

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2 Ropes & Gray LLP
3 One Metro Center
4 700 12th Street NW, Suite 900
5 Washington, DC 20005-3948
6 Telephone: (202) 508-4693
7 Email: Paul.schoenhard@ropesgray.com

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 X Email

8 DATED this 18th day of July, 2012.

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SUSIE CLIFFORD

MICROSOFT CORPORATION'S SECOND
SUPPLEMENTAL DISCLOSURE OF
WITNESSES - 6

LAW OFFICES
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EXHIBIT D

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE
3

4 MICROSOFT CORPORATION,)
5 Plaintiff,) C10-01823-JLR
6 v.) SEATTLE, WASHINGTON
7 MOTOROLA INC., et al,) March 14, 2012
8 Defendant.) (Phone
9) Conference)
10)

11 VERBATIM REPORT OF PROCEEDINGS
12 BEFORE THE HONORABLE JAMES L. ROBART
13 UNITED STATES DISTRICT JUDGE
14

15 APPEARANCES:

16 For the Plaintiff: Arthur Harrigan, Christopher
17 Wion, David Pritikin, Andy
18 Culbert, Shane Cramer and David
19 Killough

20 For the Defendants: Ralph Palumbo, Philip McCune,
21 Brian Cannon, Kathleen Sullivan
22 and William Price
23
24
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1 breach of contract claim." I recognize that there is
2 pending before me right now a motion regarding the
3 question of if it will be a jury trial or a bench trial.
4 And I don't want anything that I say today to suggest that
5 I have already decided that.

6 That then takes me back to what I think is the
7 operative complaint in this, which is the amended and
8 supplemental complaint. The first cause of action is for
9 breach of contract. That's paragraphs 80 through 87.

10 I want to be clear then that when you use the term
11 "Microsoft's claims," that the court is limiting you to
12 that first cause of action, the one for breach of
13 contract, and intends to rigorously hold you to that, as
14 opposed to allowing claim creep to take place in this.

15 So with those two clarifications, let me tell you what
16 our decision is based on the submission that you have
17 made.

18 The first item that you raised is supplementation of
19 discovery responses. It is my recollection that we have
20 stayed all of the claims in your multiple matters, other
21 than in regards to the RAND claims, which include the
22 breach of contract claims. Those are not stayed. And,
23 therefore, it is unclear to me why you are talking about
24 supplementation of discovery responses, as you are
25 supposed to be supplementing your discovery responses as

1 you go along, according to the Civil Rules. It doesn't
2 take some further order from the court to require you to
3 do so.

4 So I would urge you to begin preparing, if you have
5 not already, your supplementation of discovery responses
6 in anticipation for that eagerly awaited set of Findings
7 and Conclusions that are going to be forthcoming.

8 MR. PALUMBO: Your Honor, can I make a brief
9 comment in that regard? First, your statement of the
10 Microsoft claims that are subject to this next trial is
11 precisely what our understanding was. We also recognize
12 the duty to supplement on both parties.

13 And so what we are about to send out is simply a
14 letter to Microsoft indicating the prior written discovery
15 which we believe would be relevant to the breach of
16 contract claim, and on which we believe Microsoft would
17 have a duty to supplement, if there is some supplement.
18 And we are prepared to do the same thing. It would be
19 helpful for Microsoft also to get us a letter and say this
20 is our prior written discovery which we think is relevant,
21 and if you have supplementation, we would appreciate it.

22 But I agree with you, there is a continuing duty to
23 supplement, and that ought to get done, and it should only
24 be relevant to the breach of contract claims.

25 THE COURT: Mr. Harrigan, do you have any problem

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CERTIFICATE

I, Barry L. Fanning, Official Court Reporter, do hereby
certify that the foregoing transcript is true and correct.

S/Barry L. Fanning

Barry L. Fanning

EXHIBIT E

THE HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,
Plaintiff,
vs.
MOTOROLA, INC., et al.,
Defendants.
MICROSOFT CORPORATION, et al.,
Plaintiffs,
vs.
MICROSOFT CORPORATION,
Defendants.

Case No. C10-1823-JLR

DEFENDANT MOTOROLA
MOBILITY, INC.'S FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION TO
PLAINTIFF MICROSOFT
CORPORATION AND
**MICROSOFT CORPORATION'S
APRIL 3, 2013 SUPPLEMENTAL
OBJECTIONS, ANSWERS, AND
RESPONSES THERETO**

**MICROSOFT CORPORATION'S *APRIL 3, 2013 SUPPLEMENTAL OBJECTIONS,*
ANSWERS, AND RESPONSES TO MOTOROLA MOBILITY, INC.'S
FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION**

Pursuant to Fed. R. Civ. P. 26, 33, and 34 and all applicable Local Rules, Microsoft Corporation ("Microsoft") hereby submits the following answers, responses, and objections to Motorola Mobility, Inc.'s ("Defendant's" or "Motorola's") First Set of Interrogatories and Requests for Production ("Discovery Requests").

**MICROSOFT CORPORATION'S *APRIL 3,*
2013 SUPPLEMENTAL OBJECTIONS,
ANSWERS, AND RESPONSES - 1**

LAW OFFICES
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TEL. (206) 623-1700 FAX. (206) 623-8717

GENERAL OBJECTIONS

Microsoft makes the following General Objections to the Discovery Requests. These General Objections are incorporated into the specific objections to each Request. The assertion of the same or additional objections to any individual Discovery Request does not waive other General Objections that are not specifically repeated in the specific objections. The objections set forth below are based on information presently available to Microsoft. Microsoft reserves the right to supplement or amend these objections based on information later obtained through investigation, discovery, or otherwise.

1. Microsoft objects to the Discovery Requests because, as more specifically stated below, they are overbroad and/or call for the production of documents and information that are neither relevant to the issues raised in this action nor reasonably calculated to lead to the discovery of relevant or admissible evidence.

2. Microsoft objects to the Discovery Requests, including the “Definitions” and “Instructions” set forth therein, because, and to the extent that, they seek to impose on Microsoft obligations different from or greater than those imposed by federal statute, the Federal Rules of Civil Procedure, or the Local Rules.

3. Microsoft objects to any discovery directed at information or documentation protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege and/or immunity. To the extent any document protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege is produced inadvertently, Microsoft has not authorized such production, and no waiver of any privilege shall be inferred from such inadvertent production. Unless otherwise agreed by the parties and subject to a contemporaneous exchange of privilege logs or as otherwise ordered by the Court, Microsoft will endeavor to deliver its privilege log to Motorola within 30 days after completing its final production of documents pursuant to Motorola’s document requests.

1 4. Microsoft responds to the Discovery Requests as it interprets and understands
2 each Request set forth therein. If Motorola subsequently asserts an interpretation of any
3 request or sub-part thereof that differs from Microsoft's understanding of that request or sub-
4 part thereof, Microsoft reserves the right to supplement its objections and/or responses.

5 5. Microsoft objects to any Request to the extent it requires Microsoft to draw a
6 legal conclusion in order to ascertain its scope.

7 6. Microsoft objects to each Request as overly broad, not relevant to the claims
8 and defenses at issue, and not reasonably calculated to lead to the discovery of admissible
9 evidence to the extent it is not limited in time and seeks information for periods of time that are
10 not relevant to any claim or defense.

11 7. Microsoft objects to each Request to the extent it calls for premature disclosure
12 of expert opinions or contentions on legal issues or otherwise.

13 8. Microsoft objects to the Requests as cumulative, and will deem any production
14 of materials responsive to any particular request to be sufficient production with respect to any
15 other Request seeking similar materials.

16 9. Microsoft objects to any Request to the extent it is vague, ambiguous, irrelevant,
17 overbroad, unduly burdensome, or to the extent it seeks information that is: not reasonably
18 calculated to lead to the discovery of relevant or admissible evidence; unreasonably cumulative
19 or duplicative, or obtainable from some other source that is more convenient, less burdensome
20 or less expensive; of the kind that Motorola had ample opportunity to obtain from other
21 sources.

22 10. Microsoft objects to document requests that seek production of "All
23 Documents" as vague, ambiguous, overbroad, unduly burdensome, irrelevant and not
24 reasonably calculated to lead to the discovery of relevant or admissible evidence. Microsoft
25

1 will comply with its obligations under the Federal Rules to search for and produce responsive
2 documents, including searches of custodians likely to have responsive documents.

3 11. Microsoft objects to Motorola's Discovery Requests, and the definitions and
4 instructions that accompany Motorola's Discovery Requests, to the extent they mischaracterize
5 or misstate facts, circumstances, events and/or obligations.

6 12. Microsoft objects to Item No. 2 of Motorola's "Definitions," wherein Motorola
7 sets forth the definition of "Motorola Mobility," as overly vague. Microsoft does not and
8 cannot know all of Motorola's "predecessors or successors (merged, acquired, or otherwise),
9 parents, divisions, subsidiaries, and affiliates thereof, and all officers, agents, employees,
10 counsel and other persons acting on its behalf, or any other person or entity subject to Motorola
11 Mobility's control, or which controls Motorola Mobility."

12 13. Microsoft objects to Item No. 12 of Motorola's "Definitions," wherein Motorola
13 sets forth the definition of "Electronically stored information," because, and to the extent, this
14 definition seeks to impose on Microsoft obligations different from or greater than those
15 imposed by federal statute, the Federal Rules of Civil Procedure, or the Local Rules.

16 14. Microsoft objects to Item No. 13 of Motorola's "Definitions," wherein Motorola
17 sets forth the definition of "Communications," to the extent it purports to include a request for
18 oral communications, such as voice recordings. The burden and expense of reviewing and
19 producing any such communications or recordings, if it is even possible to review and produce
20 them, would outweigh their possible relevance and are not likely to lead to the discovery of
21 relevant or admissible evidence. Production of such communications or recordings would also
22 be unreasonably cumulative and duplicative because the information that might be obtained
23 from such recordings is also being sought and is obtainable, to the extent it exists, by other
24 means or from other sources that are more convenient, less burdensome, or less expensive.
25

1 15. Microsoft objects to Motorola's Discovery Requests to the extent the
 2 information requested is not reasonably accessible by Microsoft for all purposes, not just for
 3 this litigation. Information not reasonably accessible by Microsoft includes, but is not limited
 4 to, deleted documents, wherever located, and documents available on any backup or archival
 5 tapes or other media. The burden and expense of accessing, reviewing, and producing this
 6 information outweigh its possible relevance and are not likely to lead to the discovery of
 7 relevant or admissible evidence. Production of this information would also be unreasonably
 8 cumulative and duplicative because the information that might be obtained from this
 9 inaccessible data is also being sought and is obtainable, to the extent it exists, by other means
 10 or from other sources that are more convenient, less burdensome, or less expensive.

11 16. Microsoft objects to the Discovery Requests, including the "Definitions" and
 12 "Instructions" set forth therein, because and to the extent such requests, definitions, or
 13 instructions reserve the right to call for the production of documents in "native format" and/or
 14 "meta data." Such requests are overbroad, unduly burdensome and not reasonably calculated
 15 to lead to the discovery of relevant or admissible evidence. First, production in native format
 16 would make it very difficult for the parties to manage or maintain control over the materials,
 17 especially in cases involving large productions, since native formats are generally designed for
 18 easy editing compared to the fixed document formats like TIFF that are more suitable for
 19 production and evidentiary purposes. Second, due to the editable nature of most native
 20 formats, production in native format would make it impossible to ensure that confidentiality
 21 designations are consistently associated with particular documents, and therefore observed. It
 22 is not possible to apply either document production numbers or confidentiality designations at
 23 the page level when a document is produced in its native format. Although it is possible to
 24 number or make confidentiality designations at the file level, once the document is printed out
 25 it loses any connection to such numbering or designation. An individual reading a hard-copy

1 printout of a protected document would have no indication that it is designated as containing
 2 “confidential business information” and/or as confidential source code. Third, native files are
 3 capable of being modified or altered, and production in native format may raise authenticity
 4 issues that can be avoided when the information is produced in a static form. Fourth,
 5 production in native format imposes an undue burden and expense, since it would require
 6 Microsoft to search every document for hidden text that could be privileged. Accordingly,
 7 Microsoft will not produce responsive electronically stored information in native format.
 8 Instead, Microsoft will produce documents in a TIFF or pdf format, with a load file indicating
 9 document breaks, and with any agreed upon metadata fields. Microsoft also agrees that in
 10 appropriate limited circumstances, and where there is a specific need that cannot otherwise be
 11 met, it will also produce the native version of the document. In the event responsive
 12 electronically stored information does not lend itself to image file production, Microsoft will
 13 confer with Motorola regarding possible native form production, with appropriate protections
 14 to be separately negotiated and mutually agreed upon by the parties in advance of such
 15 production.

16 17. Microsoft objects to Motorola’s Discovery Requests to the extent they seek
 17 discovery of electronically stored information from sources that are not reasonably accessible
 18 in light of the burdens or costs required to locate, restore, review, and produce whatever
 19 responsive information may be found. Microsoft has attempted to identify below all known
 20 difficult-to-access sources that may contain responsive information, but it is not able to retrieve
 21 the information – or even to confirm with certainty whether any responsive information in fact
 22 exists on the sources – without incurring substantial burden or cost. *See* Fed. R. Civ. Pro.
 23 26(b)(2)(B) and FRCP 26(b)(2)(C). More easily accessed sources – such as active servers,
 24 hard drives and other direct access storage media containing active data and records that are
 25 responsive to Motorola’s requests – are likely to yield all the information that is reasonably

1 useful for this action. Further, production of information from some of the listed inaccessible
 2 sources may also be unreasonably cumulative and duplicative because information that might
 3 be obtained is also obtainable, to the extent it exists, from other sources that are more
 4 convenient, less burdensome, or less expensive. The sources that may contain potentially
 5 responsive information which Microsoft is neither searching nor producing because they are
 6 not reasonably accessible fall under the categories set out below. Microsoft has attempted to
 7 provide as much detail as is reasonably possible regarding these sources, in an effort to enable
 8 Motorola to intelligently evaluate the burdens and costs of providing discovery from these
 9 sources, and the likelihood of finding responsive and relevant information on the identified
 10 sources.

11 Centrally Managed Exchange Email Servers: Microsoft's Exchange Servers are used
 12 by employees for their email. Exchange Servers are replicated for disaster recovery and
 13 business continuity purposes only. Exchange mailbox data is replicated across multiple servers
 14 after which time the replicated data is recycled within 30 days. Microsoft has not suspended
 15 the replication rotation of this disaster recovery and business continuity process because the
 16 vast majority of data on the disaster recovery systems is an additional copy of data more
 17 readily available on the active systems. Microsoft is not searching or producing documents
 18 from these disaster recovery media.

19 Centrally Managed File Servers: Prior to 2008, file servers located in the Microsoft IT
 20 managed datacenters, as well as certain servers located outside of the datacenters but whose
 21 backup services are managed by Microsoft IT, were backed up in full on a weekly basis, with
 22 daily differential backups. Weekly tapes were maintained for 21 days; monthly tapes are kept
 23 for 90 days. After 90 days the tapes were recycled. Since 2008, each protected resource (e.g.
 24 data volume, file share, etc.) receives a recovery point each day. File servers are retained on
 25 disk for 28 days, with only a monthly backup tape created and retained for 90 days. After 90

1 days, the tapes are recycled. Microsoft has not suspended the backup rotation of this disaster
 2 recovery system. Microsoft is not searching or producing electronically stored information
 3 from this disaster recovery media.

4 Other File Servers Located Outside the Microsoft IT Datacenters: In addition to its
 5 significant centralized information systems managed by Microsoft's IT group, Microsoft
 6 business units maintain many other, decentralized information systems that are used by
 7 different business units and functional groups as required by the business needs of such units
 8 and groups, often for software development and testing. The business units and functional
 9 groups may call on Microsoft IT to perform their disaster recovery services, or they may
 10 provide their own disaster recovery services. Each decentralized group establishes and
 11 manages its own disaster recovery process, and such processes may vary from group to group.
 12 Many of these groups follow the same protocol for file server backups as followed by
 13 Microsoft's IT group. Microsoft has not suspended the backup rotation of the disaster
 14 recovery systems used for these decentralized information systems. Microsoft is not searching
 15 or producing electronically stored information from these disaster recovery media. At this
 16 juncture, investigation as to the existence of any relevant and reasonably accessible
 17 information is conducted on a case-by-case basis and predicated on its investigation thus far,
 18 Microsoft has no reason to believe that any such data exists for this case.

19 Obsolete Backup Media: As with many large organizations, Microsoft's disaster
 20 recovery policies have evolved with changing technology and business needs over time. As to
 21 some of the file servers currently or historically managed by Microsoft's centralized IT group,
 22 obsolete backup media may exist. Such media is not used for disaster recovery, nor is it used
 23 for any business purpose. For a majority of the obsolete media, Microsoft has no record of
 24 what data was written to an individual tape or reel due to the loss or retirement of obsolete tape
 25 databases and the and the labels on the individual housings of the tapes and reels, or on the

bins are not informative as to content. When inventory or labeling information is available it is usually limited to include some of the following data points: the name of the server, the media type, an ID or tracking number for the media, the date of the creation of the media, and the drives backed up. Microsoft has no records identifying the business units or individuals who stored documents on a particular server, and therefore has no record of whose or what documents might be stored on any of the obsolete tapes. In many instances, the drives needed to restore obsolete media are no longer available at Microsoft, and may not be available commercially or otherwise. The cost and burden of restoring these obsolete media would be excessive, even assuming that the hardware, software and trained staff to restore the media could be located. Microsoft is not searching or producing documents from this obsolete media.

Legacy Systems: Microsoft was incorporated in 1981 and began operations a few years before that. As of March 2010 Microsoft had over 88,000 employees working in over 650 buildings located in 41 of the United States and over 100 countries around the world. Over the years Microsoft has replaced, changed, and/or upgraded the hardware and software used by individual employees and for its shared information systems. As such, it is possible that legacy data remaining from obsolete systems is located in various storage media which may be incompatible with and unintelligible on the successor systems. To the extent such legacy data exists, it is possible that current employees are not aware of its existence or location. Microsoft is not searching its legacy systems because it believes they are not reasonably accessible because of undue burden or cost.

Sources Requiring Computer Forensics to Access: Microsoft is not searching or producing information from any source that is capable of being accessed or viewed only through forensic or other extraordinary means. Many of these data types are created by the operating system or an application to assist in memory management or enhance the efficient functioning of the application or operating system. Operating systems and applications

generally create and overwrite such data without the intent or specific knowledge of users.

Although it is not possible to provide all the particulars of the information that might be mined through such extraordinary processes without actually performing them, examples of the types of materials that, in general, may be forensically retrieved include the following: (a) Residual, Latent or Ambient Data – Residual data, which is sometimes also called “latent” data or “ambient” data, refers to data that is not active on a computer system which is inaccessible without specialized forensic tools and techniques. “Until overwritten, these data reside on media such as a hard drive in unused space and other areas available for data storage.” The Sedona Conference Glossary (May 2005), p. 26 (*Latent Data*). This category includes “data that is not active on a computer system, including (1) data found on media free space; (2) data found in file slack space; and (3) data within files that has functionally been deleted in that it is not visible using the application with which the file was created, without use of un-delete or special data recovery techniques. May contain copies of deleted files, Internet files and file fragments.” The Sedona Conference Glossary (May 2005), p. 37 (*Residual Data*). Residual, latent or ambient data may also include such items as fragments of instant messaging chats that were not saved by the chat participants but that the operating system placed temporarily on the hard drive for memory management purposes without the knowledge of the user. (b) Temporary Files – These are “files stored on a computer for temporary use only, and are often created by Internet browsers. These temp files store information about Web sites that a user has visited, and allow for more rapid display of the Web page when the user revisits the site. Forensic techniques can be used to track the history of a computer’s Internet usage through the examination of these temporary files. Temp files are also created by common office applications, such as word processing or spreadsheet applications.” The Sedona Conference Glossary (May 2005), p. 42. (c) Cached Storage – Cache is “a dedicated, high speed storage location which can be used for the temporary storage of frequently used data. As data may be

1 retrieved more quickly from cache than the original storage location, cache allows applications
 2 to run more quickly. Web site contents often reside in cached storage locations on a hard
 3 drive.” The Sedona Conference Glossary (May 2005), p. 6. (d) Swap Files or Page Files – A
 4 swap file is a “file used to temporarily store code and data for programs that are currently
 5 running. This information is left in the swap file after the programs are terminated, and may be
 6 retrieved using forensic techniques. Also referred to as a page file or paging file.” The Sedona
 7 Conference Glossary (May 2005), p. 41.

8 Databases: To the extent Motorola’s Requests seek different data or data in
 9 configurations different from those for which such databases are configured, Microsoft is not
 10 searching or attempting to produce information from such databases because it believes they
 11 are not reasonably accessible because of undue burden or cost.

12 Source Code not Stored in Microsoft’s Central Source Repositories: Microsoft objects
 13 to Motorola’s Requests to the extent they seek the production of all source code for a particular
 14 product. Source code for a large software product often contains tens of millions of lines of
 15 code that hundreds or even thousands of individuals in different parts of the company have
 16 helped create over a number of years. Microsoft manages the process using a database tool
 17 called Source Depot, also called the “source tree.” At any one time, the Source Depot for a
 18 product or major part contains the most current version of the source code for that product as
 19 well as source code relating to various past versions. Collecting source code from the Source
 20 Depot is relatively straightforward. However, not all source code for a product or major part is
 21 stored in its source tree. For example, Microsoft Office contains parts built by groups within
 22 Microsoft outside the Office group (e.g., the division that creates tools used by software
 23 developers) and by third-party vendors. The source code for such “partner parts” is created
 24 and stored by the partner group elsewhere in Microsoft or by the third-party vendor, which
 25 provides only already-compiled binary code – not source code – to the Office source tree. The

1 process to identify, locate and collect all of the source code not stored in a product's source
 2 tree is extraordinarily difficult, time-consuming, and not always fruitful. There is no single
 3 comprehensive list of all the source code for the parts that were contributed by partner groups.
 4 This is because, in the ordinary course of business, and after a product is released, Microsoft
 5 has no need to identify or collect all the source code for it. When a product such as Office is
 6 released, the source code in the source tree is "compiled" into "binary" (i.e., a series of zeros
 7 and ones, a/k/a "object code") code and combined with binary code provided by any partner
 8 groups to "build" the version that is released to licensees. Thereafter, it may be necessary to
 9 locate certain portions of source code used to build the product in order to fix bugs, but the full
 10 set of source code is not needed. In order to be certain that it has assembled the complete set
 11 of source code for a product released several years ago, Microsoft would have to work
 12 backward from the final product. This would require first determining which binary code in
 13 the final product is or is not associated with what versions and parts of source code in the
 14 (more readily accessible) source tree. Then, Microsoft developers would need to figure out
 15 which partner group produced that binary code, and then attempt to obtain the code from that
 16 group. Many developers in these groups will have changed jobs, moved to other groups within
 17 Microsoft, or may have left the company, and may no longer be able to provide that group's
 18 portion of source code.

19 Other Sources that are not Reasonably Accessible: In addition, it is possible that
 20 Microsoft's information systems may retain information on other sources that are accessible
 21 only by incurring substantial burdens or costs. Microsoft's identification of sources that are
 22 not reasonably accessible is based upon information currently known. Microsoft reserves the
 23 right to supplement its response as additional information about other potentially responsive
 24 information from other sources that are not reasonably accessible becomes known.
 25

1 As set forth in more detail in its responses to Motorola's individual requests, Microsoft
 2 is producing electronically stored information that is responsive, not privileged, and reasonably
 3 accessible. Microsoft believes that Motorola should review and evaluate the information from
 4 such sources before requesting that Microsoft search for and produce information contained on
 5 sources that are not reasonably accessible. If, after such review and evaluation, Motorola
 6 continues to seek discovery of information from sources that have been identified as not
 7 reasonably accessible, Microsoft requests that the parties schedule a meet and confer to
 8 discuss, among other things, the particular type(s) of information sought by Motorola and its
 9 relevance to the parties' respective claims and defenses, the burdens and costs of accessing,
 10 retrieving and reviewing such information, the needs that may establish "good cause" for
 11 requiring all or part of the requested discovery notwithstanding its inaccessibility, and
 12 conditions on obtaining and producing the information that may be appropriate, including
 13 whether Motorola is willing to pay the costs associated with such discovery.

14 18. Microsoft objects to Motorola's requests for production to the extent they seek
 15 to impose an obligation on Microsoft to create and maintain wholly new documents, through
 16 recording communications that have not otherwise been recorded in the ordinary course of
 17 business, solely for the purpose of discovery in the litigation.

18 19. Microsoft objects to the Discovery Requests on the grounds that they seek the
 19 production of documents containing confidential, nonpublic business documents, financial
 20 data, proprietary knowledge or trade secret information of Microsoft and third parties
 21 ("Confidential Information"). Microsoft will produce responsive, non-privileged Confidential
 22 Information subject to entry of a stipulated protective order signed by the Court.

23 20. Microsoft objects to the Discovery Requests to the extent that they would
 24 require Microsoft to search for documents from custodians from whom Microsoft has already
 25 searched for documents responsive to Motorola's discovery requests in other actions because

1 such a requirement is burdensome and inefficient. If, after Motorola reviews the documents
2 produced in response to its discovery requests in the other actions, Motorola believes that
3 additional responsive documents exist, Microsoft is willing to meet and confer regarding the
4 scope of such additional discovery.

5 21. No incidental or implied admissions are intended by the objections herein. The
6 assertion of any objection to the Discovery Requests is not intended to mean, and shall not be
7 construed as acknowledging or suggesting, that any responsive documents were in fact created
8 or exist or that Microsoft has possession, custody, or control of such documents. Nor shall the
9 fact that Microsoft has objected to any Discovery Request be taken as an admission that
10 Microsoft accepts or admits the existence of any facts set forth or assumed by such Discovery
11 Request.

12 22. As used herein, the term "Motorola Patent Actions" refers to the actions filed by
13 Motorola Mobility, Inc. and General Instrument Corporation in the Federal District Court for
14 the Western District of Wisconsin (Case Nos. 3:10-CV-699, 3:10-CV-700, and 3:10-CV-826);
15 the Southern District of Florida (Case No. 1:10-cv-24063); and before the International Trade
16 Commission (ITC Case No. 337-TA-752).

17 23. Microsoft's failure to object to a Discovery Request on a particular ground shall
18 not be construed as a waiver of its right to object on that ground or any additional ground at
19 any time.

20 24. All documents that Microsoft produces in response to these Discovery Requests
21 will be produced at times and places to be agreed upon by counsel.

1 **INTERROGATORY NO. 3:** State the factual basis for any contention underlying
 2 Microsoft's claim that Motorola's October 21, 2010 and October 29, 2010 Letter constituted a
 3 breach or other violation of a commitment to license patents on reasonable and non-
 4 discriminatory terms.

5 **ANSWER:** Microsoft incorporates by reference each of its General Objections as
 6 though set forth herein. Microsoft further objects that this is a premature contention
 7 interrogatory. Microsoft is not obligated to respond to premature contention interrogatories
 8 until the parties have substantially completed discovery.

9 Subject to and without waiving these objections, Microsoft answers that, in willful
 10 disregard of the commitments Motorola made to IEEE and the ITU-T, Motorola has refused to
 11 extend to Microsoft a license consistent with Motorola's promises for any of Motorola's
 12 allegedly "essential" patents. Instead, Motorola is demanding royalty payments that are wholly
 13 disproportionate to the royalty that its patents should command under any reasonable calculus.
 14 Motorola has discriminatorily chosen Microsoft's Xbox product line and other multi-function,
 15 many-featured products and software, such as Windows 7 and Windows Phone 7 and products
 16 incorporating Microsoft software, for the purpose of extracting unreasonable royalties from
 17 Microsoft that are inconsistent with Motorola's obligation to offer licenses for the relevant
 18 patents on RAND terms and conditions.

19 In further response, Microsoft states as follows:

20 **Motorola's October 21, 2010 Letter**

21 By letter to Microsoft, dated October 21, 2010, Kirk Dailey, Motorola's Corporate Vice
 22 President Intellectual Property, offered to license "Motorola's portfolio of patents and pending
 23 applications having claims that may be or become Essential Patent Claims (as defined in
 24 section 6.1 of the IEEE bylaws) for a compliant implementation of the IEEE 802.11
 25 Standards." Motorola offered to license the relevant patents under terms and conditions that

1 included a "royalty of 2.25% per unit for each 802.11 complaint product[.]" Motorola stated
 2 that the royalty "is calculated based on the price of the end product (e.g., each Xbox 360
 3 product) and not on component software."

4 The cost of the chips and associated components that provide wireless connectivity for
 5 Xbox 360 consoles is a small fraction of the overall cost of the device. Moreover, Microsoft
 6 sells its Xbox 360 consoles at a number of prices. Each console includes approximately the
 7 same chips and associated components for wireless connectivity, providing the same level of
 8 relevant functionality. Motorola thus seeks a royalty on components of Xbox 360 that is
 9 disproportionate to the value and contribution of its purportedly "essential" patents and has
 10 declined to offer a license to its purported "essential" patents unless it receives exorbitant and
 11 discriminatory royalty payments to which it is not entitled. On information and belief,
 12 Motorola has not previously entered into a license agreement for its purported "essential"
 13 patents that is comparable to the demand made of Microsoft. Motorola has thereby refused to
 14 offer to license the patents at a reasonable rate, with reasonable terms, under conditions that are
 15 demonstrably free of any unfair discrimination.

16 The royalty demanded by Motorola falls well outside the boundaries of a reasonable
 17 and non-discriminatory royalty and therefore violates the commitment Motorola made to the
 18 IEEE and its members.

19 Participants in IEEE-SA standards setting efforts, including those directed to WLAN
 20 technology, were subject to the IEEE-SA Standard Board Bylaws concerning the submission
 21 of Letters of Assurance related to patent claims deemed "essential" by a submitting party.
 22 Clause 6 of those Bylaws (which was revised slightly over the years) generally provides in
 23 pertinent part:

24 A Letter of Assurance shall be either:
 25

1 a) A general disclaimer to the effect that the submitter without conditions will
2 not enforce any present or future Essential Patent Claims against any person or
entity making, using, selling, offering to sell, importing, distributing, or
implementing a compliant implementation of the standard; or

3 b) A statement that a license for a compliant implementation of the standard
4 will be made available to an unrestricted number of applicants on a worldwide
5 basis without compensation or under reasonable rates, with reasonable terms
and conditions that are demonstrably free of any unfair discrimination.

6 Motorola openly and publicly submitted Letters of Assurance pursuant to Clause 6 of
7 the IEEE-SA Standards Board Bylaws that it would offer to license any of its patents essential
8 to the applicable WLAN standard(s) to any entity under reasonable rates on a non-
9 discriminatory basis. IEEE-SA and its participants and affiliates relied on Motorola's promises
10 in developing, adopting and implementing IEEE-SA technical standards. These standards are
11 now implemented worldwide in a variety of electronic devices that have become
12 commonplace.

13 Microsoft invested substantial resources in developing and marketing products in
14 compliance with these standards, relying on the assurances of participating patent holders –
15 including Motorola – that any essential patents held by such patent holders would be available
16 for licensing by implementers of the standards on such terms.

17 By way of non-limiting example, each Xbox device includes substantial software and
18 many computer chips and modules that perform various functions, including enabling Xbox's
19 core functionality as a video gaming machine. Of those, the Xbox console includes one – an
20 interface provided to Microsoft by third-parties – that allows consumers optionally to connect
21 an Xbox to the Internet using a WLAN connection.

22 The third-party WLAN interface does not enable any of Xbox's core video gaming
23 functionality. In addition, Microsoft allows consumers an alternative, wired method to connect
24 to the Internet. This alternative method does not require use of any WLAN technology.
25

1 On information and belief, Motorola obtained rights to several of the WLAN patents it
 2 has represented as “essential” through its recent acquisition of Symbol Technologies, Inc.
 3 (“Symbol”).

4 Prior to the releases of the 802.11 protocols, Motorola and Symbol submitted Letters of
 5 Assurance to the IEEE pursuant to Clause 6 of the IEEE-SA Standards Board Bylaws with
 6 respect to those protocols, guaranteeing that any “essential” patents would be licensed under
 7 reasonable and non-discriminatory terms and conditions. Both Motorola’s and Symbol’s
 8 Letters of Assurance apply to any “essential” patents they then held as well as any other
 9 “essential” patents they subsequently obtained.

10 In reliance on these letters of assurance, IEEE released the 802.11 standard and various
 11 amendments to that standard that Motorola asserts incorporated Motorola’s and Symbol’s
 12 patented technology. On information and belief, once Motorola and Symbol disclosed that
 13 they likely held essential patents, absent a licensing commitment from them to the effect that
 14 they would offer licenses to “essential” patents on reasonable and non-discriminatory terms
 15 and conditions, the relevant IEEE working groups would have either revised the standards,
 16 employing alternative technologies instead, stopped working on the protocols or taken other
 17 actions.

18 In submitting its Letter of Assurance pursuant to the applicable IEEE IPR policy,
 19 Motorola entered into an actual or implied contract with IEEE, for the benefit of IEEE
 20 members and any entity that implements the 802.11 standard. Motorola is bound by its
 21 agreements to offer licenses consistent with the referenced IEEE bylaws.

22 Similarly, Symbol, in submitting its Letter of Assurance pursuant to the applicable
 23 IEEE IPR policy, entered into an actual or implied contract with IEEE, for the benefit of IEEE
 24 members and any other entity that implements the 802.11 standard, and Motorola is bound by
 25 that commitment.

Motorola broke its promise to IEEE-SA and its members and affiliates by refusing to offer to Microsoft a license that is consistent with Motorola's Letter(s) of Assurance and Clause 6 of the IEEE-SA Standards Board Bylaws, instead demanding royalties that are excessive and discriminatory.

Motorola's October 29, 2010 Letter

By letter to Microsoft, dated October 29, 2010, Kirk Dailey, Motorola's Corporate Vice President Intellectual Property, offered to license "Motorola's portfolio of patents and pending applications covering the subject matter of ITU-T Recommendation H.264[.]" Motorola offered to license the relevant patents under terms and conditions that included a "royalty of 2.25% per unit for each H.264 complaint product[.]" Motorola stated that the royalty "is calculated based on the price of the end product (e.g., each Xbox 360 product, each PC/laptop, each smartphone, etc.) and not on component software (e.g., Xbox 360 system software, Windows 7 software, Windows Phone 7 software, etc.)."

The cost of such component software and any inter-related hardware is a small fraction of the overall cost of the listed devices. Moreover, Microsoft sells products having H.264 related capabilities at a wide range of prices, without regard to the significance of such H.264 related capabilities to the primary or expected use of the products. Motorola thus seeks a royalty on software and hardware components of Xbox 360 and other devices that are unrelated to its identified patents and has declined to offer a license unless it receives exorbitant royalty payments to which it is not entitled. On information and belief, Motorola has not previously entered into a license agreement for its identified patents that is comparable to the demand made of Microsoft. Motorola has thereby refused to offer to license the patents at a reasonable rate, with reasonable terms, on a non-discriminatory basis.

1 The royalty demanded by Motorola falls well outside the boundaries of a reasonable
2 and non-discriminatory royalty and therefore violates the commitment Motorola made to the
3 ITU and its members.

4 Participants in ITU-T standards setting efforts, including those directed to H.264
5 technology, were subject to the ITU-T Common Patent Policy concerning the submission of
6 Patent Statement and Licensing Declarations related to patents identified by a submitting party.
7 The ITU-T Common Patent Policy generally provides, in pertinent part, that a patent holder's
8 statement may declare that:

9 (2.1) The patent holder is willing to negotiate licenses free of charge with other
10 parties on a non-discriminatory basis on reasonable terms and conditions.

11 (2.2) The patent holder is willing to negotiate licenses with other parties on a
12 non-discriminatory basis on reasonable terms and conditions.

13 Motorola openly and publicly submitted Patent Statement and Licensing Declarations
14 pursuant to the ITU-T's Common Patent Policy that it would offer to license any of its patents
15 essential for the relevant H.264 Recommendation(s) to any entity under reasonable rates on a
16 non-discriminatory basis. The ITU-T and its participants and affiliates relied on Motorola's
17 promises in developing, adopting and implementing the ITU-T H.264 Recommendations (or
18 standards). These standards are now implemented worldwide in a variety of electronic devices
19 and software that have become commonplace. Microsoft invested substantial resources in
20 developing and marketing products in compliance with these standards, relying on the
21 assurances of participating patent holders – including Motorola – that any “essential” patents
22 held by such patent holders would be available for licensing by implementers of the standards
23 on such terms.

24 In submitting its Patent Statement and Licensing Declarations pursuant to the
25 applicable ITU-T policy, Motorola entered into an actual or implied contract with the ITU-T,

1 for the benefit of ITU-T members and any entity that implements the H.264 technologies.
 2 Motorola is bound by its agreements to offer licenses consistent with the referenced ITU-T
 3 Common Patent Policy.

4 Microsoft has participated in the development of the 802.11 and H.264 standards.
 5 Microsoft and other companies participating in the development of these standards relied on
 6 Motorola's commitments to ensure that the royalties Motorola would seek would conform to
 7 the promises made by Motorola.

8 In reliance on the integrity of the SDO process and the commitments made by Motorola
 9 and others regarding 802.11 patents they deem "essential," Microsoft began providing its Xbox
 10 video game consoles with WLAN connectivity. By way of example, Microsoft purchased and
 11 incorporated into its Xbox 360 video game consoles third-party-manufactured interfaces that
 12 provide Xbox 360 devices with WLAN connectivity. Microsoft made its decision to provide
 13 its Xbox video game consoles with WLAN connectivity in reliance on, and under the
 14 assumption that, it and/or any third party supplier could avoid patent litigation and take a
 15 license to "essential" patents that Motorola, or any other company submitting a Letter of
 16 Assurance, holds with regard to the WLAN standard under IEEE's well publicized IPR policy.

17 Microsoft and other manufacturers of WLAN-compliant devices necessarily relied on
 18 the assurances of participating patent holders – including Motorola – that any "essential"
 19 patents held by such patent holders would be available for licensing by implementers of the
 20 standards on such terms.

21 Correspondingly, in reliance on the integrity of the SDO process and specifically the
 22 commitments made by Motorola and others regarding patents related to H.264 technologies,
 23 Microsoft began providing its H.264 technology capability in its Xbox video game consoles.
 24 Microsoft made its decision to provide its Xbox video game consoles with H.264 technology in
 25 reliance on, and under the assumption that, it and/or any third party supplier could avoid patent

1 litigation and take a license to any “essential” patents held by Motorola, or any other company
 2 submitting a Patent Statement and Licensing Declaration, under the ITU-T’s well-publicized
 3 IPR policy.

4 Microsoft made similar investments in other fields, including Windows 7 and Windows
 5 Phone 7, based upon Motorola’s representations in relation to the H.264 technology standards.
 6 Microsoft and other manufacturers and suppliers of H.264 compliant technology necessarily
 7 relied on the commitments of Motorola and others to license their “essential” patents under
 8 these terms.

9 By way of non-limiting example, each personal computer running Windows 7 includes
 10 substantial software and many computer chips and modules that perform various functions,
 11 including those related to the general operation of a computing device. Of those, each personal
 12 computer includes just a portion directed to H.264 technologies.

13 By way of further non-limiting example, each smartphone running Windows Phone 7
 14 includes substantial software and many computer chips and modules that perform various
 15 functions, including those related to the general and particularized operation of a smartphone
 16 independent of H.264 technology. Of those, each smartphone includes just a portion directed
 17 to H.264 technologies.

18 Motorola broke its promise to the ITU-T and its members and affiliates by refusing to
 19 offer to Microsoft a license that is consistent with Motorola’s Patent Statement and Licensing
 20 Declaration(s) and the Common Patent Policy of the ITU-T, instead demanding royalties that
 21 are excessive and discriminatory.

22 **SUPPLEMENTAL RESPONSE OF APRIL 3, 2013:**

23 Motorola committed to license its standard essential patents on RAND terms. This
 24 meant that Motorola had to make a license available to any implementer of the standards.
 25

1 Offers made to prospective licensees had to be commercially reasonable. Motorola could not
 2 seek injunctive relief instead of entering into a license on RAND terms, especially in
 3 circumstances where its license offers were not commercially reasonable. In addition,
 4 Motorola was subject to a duty of good faith and fair dealing in licensing and offering to
 5 license its standard essential patents.

6 As a consequence of these contractual obligations undertaken by Motorola, Motorola
 7 breached its RAND commitments in at least the following respects. Motorola's breach is not
 8 limited to the October 2010 demand letters.

- 9 • Motorola's October 2010 demand letters did not offer licenses to Microsoft on
 10 RAND terms, and, to the contrary, were commercially unreasonable and
 11 facially outrageous; Motorola improperly sought the holdup value of its patents
 12 rather than their RAND value and improperly sought a royalty on the entire
 market value of products, which included many components and features for
 which Motorola was not entitled to any compensation.
- 13 • Motorola improperly sought injunctive relief in the ITC, the district courts and
 14 Germany instead of honoring its commitment to make licenses available on
 15 RAND terms. Repeated judicial and administrative rulings specific to Motorola
 16 have confirmed that its pursuit of injunctive relief was improper, including
 17 Judge Posner's June 22, 2012 determination that Motorola could not obtain
 18 injunctive relief on its 802.11 standard-essential patents; the Court's November
 19 29, 2012 order enjoining Motorola from seeking injunctive relief against
 20 Microsoft with respect to Motorola's H.264 and 802.11 standard essential patent
 21 portfolios; and the January 3, 2013 FTC consent order prohibiting Google and
 22 Motorola from obtaining or enforcing injunctive relief on standard-essential
 patents during the pendency of district court's resolution of a request for a
 RAND determination. As the FTC explained, the consent order barring
 Motorola from pursuing injunctive relief targeted "breaches by Google and its
 subsidiary [Motorola] of Motorola's commitments to license standard-essential
 patents ('SEPs') on terms that are fair, reasonable and non-discriminatory
 ('FRAND')." Statement of the Federal Trade Commission, *In the Matter of*
Google Inc., FTC File No. 121-0120 (Jan. 3, 2013).
- 23 • Motorola declined to offer a license to Microsoft's chip supplier Marvell (which
 24 requested a license for the specific benefit of Microsoft) on RAND terms that
 25 would cover product shipped to Microsoft and acted in a way that was both
 unreasonable and discriminatory.

- 1 • Once Motorola was acquired by Google and Microsoft had a right to a license to
2 Motorola's H.264 standard essential patents by virtue of Google's participation
3 in the MPEG-LA AVC pool, Motorola refused to grant a license on those terms,
4 which would have complied with the RAND commitment.
- 5 • Motorola violated the covenant of good faith and fair dealing by reason of all of
6 the actions recited above, whether considered separately or collectively, on an
7 objective standard.
- 8 • Motorola also violated the covenant of good faith and fair dealing because it
9 knew it was acting, and intended to act, inconsistently with the covenant of
10 good faith and fair dealing by virtue of the actions recited above and the
11 following additional indicia of intent:
 - 12 ○ Motorola's objective from the beginning was to secure crippling
13 injunctive relief in some forum so that Microsoft would be deterred from
14 seeking compensation for Motorola's infringement of Microsoft's non
15 standard essential patents in Motorola's Android phones. Motorola's
16 demand letters in October 2010 were intended to set forth offers that it
17 knew no reasonable company would accept.
 - 18 ○ In furtherance of the pursuit of injunctive relief, Motorola stated that the
19 offers in the demand letters would remain open for only 20 days.
 - 20 ○ At the time that the demand letters were sent, Motorola had never
21 entered into a license with anyone for its H.264 or 802.11 standard
22 essential patents that was remotely comparable to the terms of the
23 demand letter
 - 24 ○ Motorola understood the financial implications of the demand letter,
25 including that it would be compensated for components and features as
to which it had no patents.
 - Motorola sought injunctions knowing that the terms in its October 2010
demand letters would be unacceptable to Microsoft and would not be
accepted.
 - Motorola demanded that Marvell pay royalties on the end product sales
of its downstream customers even though no one had ever agreed to pay
royalties to Motorola on this basis.
 - Motorola discriminated against Marvell and Microsoft by excluding
chips sold to Microsoft from the license offered to Marvell.

- Motorola in league with its parent company Google evaded the requirements of the MPEG-LA AVC pool agreement.

INTERROGATORY NO. 4: State the factual basis for any contention that Microsoft suffered damage to its business or property, or was irreparably injured, by reason of the October 21, 2010 Letter and/or October 29, 2010 Letter.

ANSWER: Microsoft incorporates by reference each of its General Objections as though set forth herein. Microsoft further objects that this is a premature contention interrogatory. Microsoft is not obligated to respond to premature contention interrogatories until the parties have substantially completed discovery.

Subject to and without waiving the foregoing objections, Microsoft answers that it has suffered damage because, and to the extent that, Microsoft and its employees have been forced to expend a significant amount of time, money and resources on issues relating to this dispute and the Motorola Patent Actions. But for Motorola's failure to offer Microsoft licenses to those patents Motorola alleges are "essential" to implementation of the H.264 and 802.11 standards on RAND terms and conditions, Microsoft would not have incurred these costs, expenses or losses of productivity. It will be difficult, if not impossible, for Microsoft to recoup this lost time and productivity, and Microsoft's losses will continue until Motorola complies with the contractual commitments it made to the IEEE, ITU, and their members. Microsoft has also been damaged as a result of having to defend the Motorola Patent Actions, in which Motorola seeks to enjoin or exclude Microsoft from practicing, or importing products that practice, the 802.11 and H.264 standards. Further, Microsoft may also suffer imminent loss of profits, loss of customers and potential customers, and loss of goodwill and product image as a result of Motorola's refusal to offer licenses to the relevant technologies on fair and reasonable terms.

SUPPLEMENTAL RESPONSE OF APRIL 3, 2013:

Motorola's breach is not limited to its October 2010 demand letters. In addition to suffering damage to its business or property and irreparable injury as a consequence of the October 2010 demand letters, Microsoft has also suffered damage to its business or property and irreparable injury as a consequence of other actions taken by Motorola (or its failure to act) in breach of its contractual commitments.

On November 22, 2010, Motorola filed an ITC action seeking exclusion of Xbox consoles based on three patents alleged to be essential to H.264 and one patent alleged to be essential to 802.11. Motorola also filed district court cases asserting patents alleged to be essential to H.264 or 802.11.

On July 6 and 7, 2011, Motorola filed two patent infringement suits in Germany, asserting patents claimed to be essential to the H.264 standard. Motorola sought an injunction that would exclude Microsoft products (including the Windows operating system and the Xbox video game console) from the German market. Microsoft incorporates by reference its previous response describing harm flowing from the Motorola Patent Action, as analogous harms have been caused by Motorola's German suits, including the costs of defending against Motorola's improper pursuit of injunctions. Microsoft also incorporates by reference all filings made in support of its Motion for TRO and Preliminary Injunction, including Dkt. Nos. 209–217.

Motorola's failure to grant Microsoft a RAND license to its H.264 and 802.11 patents, and its pursuit of injunctions has imposed significant costs on Microsoft. But for the breach of the RAND obligations, this injury would not have been incurred. Thus damages attributable to the breach include Microsoft's legal expenses incurred in defending the ITC and district court cases, insofar as they were based on standard essential patents and legal expenses incurred in defending the German actions based on H.264 patents.

Motorola's actions forced Microsoft to implement costly measures in preparation for a potential injunctive relief that Motorola was seeking requiring Microsoft to withdraw its H.264-compliant products—including Windows and Xbox—from the German market, and Xbox from the U.S. Market. Microsoft took these measures in order to mitigate the greater damages it would have suffered from the injunctive relief Motorola was seeking obtained in breach of Motorola's RAND commitments. Microsoft's main logistics and products/software distribution center for the European, Middle Eastern and African ("EMEA") market was located in Germany. The injunction Motorola sought through its German actions would have not only removed Microsoft's products from Germany, but threatened Microsoft's entire EMEA distribution network for its products.

As a result of Motorola's actions, and in an effort to mitigate the enormous financial and non-economic damages that Microsoft would have suffered had it been excluded from the German market as a result of Motorola's breach, Microsoft was forced to relocate its EMEA distribution center to the Netherlands in spring 2012. The costs incurred by Microsoft in connection with these relocation efforts were approximately \$11.6 million. Further, the annual cost of operating its distribution center out of the Netherlands is approximately \$5,000,000 greater than the cost of continuing to operate the distribution center in Germany would have been in the period after the move, a cost increase which is continuing. Invoices and other substantiating documentation for certain of these costs, identified as Bates range MS-MOTO_1823_00004081413 - MS-MOTO_1823_00004081432, are being produced today. Should Microsoft become aware of additional information or documentation bearing on these damages, Microsoft will supplement its response, as contemplated by Rule 26(e).

On July 18, 2011, Marvell sought a license to Motorola's 802.11 patents so that the wifi chipsets it sold to Microsoft and products in which they were used would be licensed. If the

1 license had been available at that time, Microsoft would not have incurred any further damage
2 by failure of Motorola to make available a license on RAND terms for its 802.11 patents.

3 On May 22, 2012, Motorola was acquired by Google, and Microsoft was entitled to a
4 license to Motorola's H.264 patents under the terms of Google's license agreement with
5 MPEG-LA on terms set forth in the pool license. Motorola failed to make available a license
6 on those terms. If the license had been available at that time, Microsoft would not have
7 incurred any further damage by failure of Motorola to make available a license on RAND
8 terms for its H.264 patents.

9 SUPPLEMENTAL OBJECTIONS, ANSWERS, AND RESPONSES DATED this 3rd
10 day of April, 2013.

11 DATED this 3rd day of April, 2012.

12 CALFO HARRIGAN LEYH & EAKES LLP

13
14 By s/ Christopher Wion
15 Arthur W. Harrigan, Jr., WSBA #1751
16 Christopher Wion, WSBA #33207
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Counsel for Microsoft Corp.

CERTIFICATE OF SERVICE

I, Linda Bledsoe, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.

2. On the 3rd day of April, 2013, I caused the preceding document to be served on counsel of record in the following manner:

Attorneys for Motorola Solutions, Inc., and Motorola Mobility, Inc.:

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DATED this 3rd day of April, 2013.

s/ Linda Bledsoe
LINDA BLEDSOE

EXHIBIT F

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

vs.

MOTOROLA, INC., MOTOROLA
MOBILITY LLC, and GENERAL
INSTRUMENT CORPORATION,

Defendants.

CASE NO. C10-1823-JLR

**MOTOROLA'S SECOND NOTICE OF
DEPOSITION TO MICROSOFT
CORPORATION PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 30(B)(6)**

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Defendant Motorola Mobility LLC ("Motorola") will depose Plaintiff Microsoft Corporation ("Microsoft") on Monday, April 15, 2013, beginning at 9:00 AM and continuing from day-to-day thereafter, excluding Saturdays, Sundays, and holidays, until completed. The deposition shall take place at Summit Law Group, 315 Fifth Avenue South, Suite 1000, Seattle, Washington 98104-2682, or according to alternate arrangements upon which counsel jointly agree. The deposition shall be recorded by videotape, audiotape, and stenographic recording.

Microsoft shall designate one or more of its officers, directors, managing agents, or other persons who consent to testify on Microsoft's behalf as to all matters known or reasonably available to Microsoft with respect to the Topics of Examination set forth below. For each person designated, Microsoft shall advise counsel for Motorola of the identity of that person and the topic(s) on which that person shall testify at least seven days in advance of the deposition. Microsoft shall also produce all relevant documents in that person's possession at least seven days in advance of the deposition.

DEFINITIONS

For the purposes of this Notice of Deposition, the following words and phrases have the following meaning:

1. "MOTOROLA" refers to Defendant Motorola Mobility, LLC.
2. "PLAINTIFF" or "MICROSOFT" refers collectively and individually to Microsoft Corporation, and all its predecessors or successors (merged, acquired, or otherwise), parents, divisions, subsidiaries, and affiliates thereof, and all officers, agents, employees, counsel and other persons acting on its behalf, or any other person or entity subject to Microsoft's control, or which controls Microsoft.
3. The term "STANDARDS DEVELOPING ORGANIZATION" and "SDO" shall mean any standards setting organization, standards developing organization, or standards setting body, or other standards organization, including but not limited to the Institute of Electrical and Electronics Engineers ("IEEE"), the IEEE Standards Association ("IEEE-SA"), the International

1 Telecommunication Union ("ITU"), and the ITU's Telecommunication Standardization Sector
2 ("ITU-T").

3 **TOPICS OF EXAMINATION**

4 5 **TOPIC NO. 1:**

6 Facts relating to any and all damage MICROSOFT claims to have suffered as a result of
7 any breach by MOTOROLA of its obligations or commitments to any SDO, including but not
8 limited to the factual bases for MICROSOFT'S contention, if it so contends, that said alleged
9 damage resulted from MOTOROLA'S alleged breach of its obligations or commitments to an
10 SDO, any efforts by MICROSOFT to mitigate the damages claimed, the persons with knowledge
11 of such facts, and documents relating to such facts.

12 **TOPIC NO. 2:**

13 The attorneys' fees and other litigation costs (including the dollar amount) MICROSOFT
14 has incurred relating to this dispute and to the actions filed by Motorola Mobility, Inc. and General
15 Instrument Corporation in the Federal District Court for the Western District of Wisconsin (Case
16 Nos. 3:10-CV-699, 3:10-CV-700, and 3:10-CV-826); the Southern District of Florida (Case No.
17 1:10-cv-24063); and before the International Trade Commission (ITC Case No. 337-TA-752),
18 including but not limited to, the factual basis for MICROSOFT'S contention, if it so contends, that
19 said attorneys' fees and other litigation costs were incurred as a result of MOTOROLA'S alleged
20 breach of its obligations or commitments to an SDO, other reasons why such attorneys' fees and
21 other litigation costs were incurred, any efforts by MICROSOFT to mitigate the damages claimed,
22 the persons with knowledge of such facts, and documents relating to such facts.

23 **TOPIC NO. 3**

24 Any costs or expenses (including the dollar amount) other than attorneys' fees and other
25 litigation costs, including without limitation lost employee time and loss of productivity, that
26 MICROSOFT has incurred relating to this dispute and to the actions filed by Motorola Mobility,
27 Inc. and General Instrument Corporation in the Federal District Court for the Western District of
28 Wisconsin (Case Nos. 3:10-CV-699, 3:10-CV-700, and 3:10-CV-826); the Southern District of

1 Florida (Case No. 1:10-cv-24063); and before the International Trade Commission (ITC Case No.
2 337-TA-752), including but not limited to, the factual basis for MICROSOFT'S contention, if it so
3 contends, that said costs or expenses were incurred as a result of MOTOROLA'S alleged breach
4 of its obligations or commitments to an SDO, other reasons why such costs or expenses were
5 incurred, any efforts by MICROSOFT to mitigate the damages claimed, the persons with
6 knowledge of such facts, and the documents relating to such facts.

7 **TOPIC NO. 4**

8 The attorneys' fees and other litigation costs (including the dollar amount) MICROSOFT
9 has incurred relating to the actions filed by Motorola on July 6 and 7, 2011, in Germany, asserting
10 that Microsoft infringes Motorola patents essential to the H.264 standard, including but not limited
11 to, the factual basis for MICROSOFT'S contention, if it so contends, that said attorneys' fees and
12 other litigation costs were incurred as a result of MOTOROLA'S alleged breach of its obligations
13 or commitments to an SDO, other reasons why such fees or expenses were incurred, any efforts by
14 MICROSOFT to mitigate the damages claimed, the persons with knowledge of such facts, and the
15 documents relating to such facts.

16 **TOPIC NO. 5**

17 Any costs or expenses (including the dollar amount) other than attorneys' fees and
18 litigation costs, including without limitation lost employee time and loss of productivity, that
19 MICROSOFT has incurred relating to the actions filed by Motorola on July 6 and 7, 2011, in
20 Germany, asserting that Microsoft infringes Motorola patents essential to the H.264 standard,
21 including but not limited to, the factual basis for MICROSOFT'S contention that said costs and
22 expenses were incurred as a result of MOTOROLA'S alleged breach of its obligations or
23 commitments to an SDO, other reasons why such costs or expenses were incurred, any efforts by
24 MICROSOFT to mitigate the damages claimed, the persons with knowledge of such facts, and the
25 documents relating to such facts.

26 **TOPIC NO. 6**

27 The attorneys' fees and other litigation costs and expenses (including the dollar amount)
28 MICROSOFT has incurred in connection with defending itself in any action in which

1 MOTOROLA sought to enjoin or exclude MICROSOFT from practicing, or importing products
2 that practice, the 802.11 and H.264 standards, including without limitation those actions filed in
3 the International Trade Commission, in the U.S. district courts, and in Germany, including but not
4 limited to, the factual basis for MICROSOFT'S contention that said attorneys' fees and other
5 litigation costs were incurred as a result of MOTOROLA'S alleged breach of its obligations or
6 commitments to an SDO, other reasons why such fees and costs were incurred, any efforts by
7 MICROSOFT to mitigate the damages claimed, the persons with knowledge of such facts, and the
8 documents relating to such facts.

9 **TOPIC NO. 7**

10 Any actual or imminent loss of profits (including the dollar amount), loss of customers and
11 potential customers, and loss of goodwill and product image suffered by MICROSOFT as a result
12 of any claimed breach of contract by MOTOROLA, including but not limited to the identities of
13 customers lost or potentially lost, the factual basis for MICROSOFT'S contention, if it so
14 contends, that said losses were a result of MOTOROLA'S alleged breach of its obligations or
15 commitments to an SDO, other possible causes of said losses, any efforts by MICROSOFT to
16 mitigate the damages claimed, the persons with knowledge of such facts, and the documents
17 relating to such facts.

18 **TOPIC NO. 8**

19 The costs (including the dollar amount) incurred by MICROSOFT in preparation for a
20 potential injunction requiring MICROSOFT to withdraw its H.264-compliant products from the
21 German market and the actions taken in preparation for the potential injunction, including without
22 limitation costs relating to MICROSOFT's relocation of its EMEA distribution center to the
23 Netherlands and increased costs associated with operating the EMEA distribution center out of the
24 Netherlands instead of Germany, the history of the decision to relocate the EMEA distribution
25 center, all other factors considered by MICROSOFT in connection with relocating the EMEA
26 distribution center, the basis for MICROSOFT'S contention, if it so contends that said relocation
27 and costs associated therewith was a result of MOTOROLA'S alleged breach of its obligations or
28 commitments to an SDO, all other lawsuits against MICROSOFT pending in Germany prior to the

1 relocation of its EMEA distribution center in which MICROSOFT faced the risk of injunction,
2 destruction of devices, or other remedies, relating to its distribution center in Germany or the
3 distribution of its products in Germany, other options MICROSOFT considered taking to prepare
4 for the potential injunction in Germany and the costs of such options, any efforts by MICROSOFT
5 to mitigate the damages claimed, all communications with any third parties regarding relocating
6 the EMEA distribution center to the Netherlands, the persons with knowledge of such facts, and
7 the documents relating to such facts.

8 **TOPIC NO. 9**

9 The costs (including the dollar amount) incurred by MICROSOFT in preparation for a
10 potential injunction requiring MICROSOFT to withdraw its Xbox products from the U.S. market
11 and the actions taken in preparation for the potential injunction, all other factors considered with
12 respect to those actions, the factual basis for MICROSOFT'S contention, if it so contends, that
13 said costs were incurred as a result of MOTOROLA'S alleged breach of its obligations or
14 commitments to an SDO, all other lawsuits against MICROSOFT pending in the United States in
15 which MICROSOFT faced the risk of injunction, destruction of devices, or other remedies,
16 relating to its manufacturing or distribution of its products in the United States, other options
17 MICROSOFT considered taking to prepare for the potential injunction in the United States and the
18 costs of such options, any efforts by MICROSOFT to mitigate the damages claimed, the persons
19 with knowledge of such facts, and the documents relating to such facts.

20 **TOPIC NO. 10**

21 Facts relating to any irreparable harm or other harm not adequately compensable at law
22 that MICROSOFT claims it has suffered or will suffer as a result of any breach by MOTOROLA
23 of its obligations or commitments to any SDO, persons with knowledge of such facts, and the
24 documents relating to such facts.

1 DATED this 5th day of April, 2013.

2
3
4 SUMMIT LAW GROUP PLLC

5 By /s/ Ralph H. Palumbo

6 Ralph H. Palumbo, WSBA #04751

7 Philip S. McCune, WSBA #21081

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11 *lynne@summitlaw.com*

12 By /s/ Thomas V. Miller

13 Thomas V. Miller

14 MOTOROLA MOBILITY LLC

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16 Libertyville, IL 60048-1286

17 (847) 523-2162

QUINN EMANUEL URQUHART &
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By /s/ William C. Price

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williamprice@quinnemanuel.com

PROOF OF SERVICE

I am employed in the County of San Mateo, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 555 Twin Dolphin Drive, 5th Floor, Redwood Shores, California 94065-2139.

On April 5, 2013, I served true copies of the following document(s) described as **MOTOROLA'S SECOND NOTICE OF DEPOSITION TO MICROSOFT CORPORATION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 30(B)(6)** on the interested parties in this action as follows:

microsoft-motorola@calfoharrigan.com

Project-MS_Moto_WDWA_343_1823@sidley.com

rcederoth@sidley.com

BY ELECTRONIC MAIL TRANSMISSION: By electronic mail transmission from meghanbordonaro@quinnemanuel.com on April 5, 2013, by transmitting a PDF format copy of such document(s) to each such person at the e mail address listed below their address(es). The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on April 5, 2013, at Redwood Shores, California.

s/Meghan E. Bordonaro

Meghan E. Bordonaro

EXHIBIT G

quinn emanuel trial lawyers | silicon valley

555 Twin Dolphin Drive, 5th Floor, Redwood Shores, California 94065-2139 | TEL: (650) 801-5000 FAX: (650) 801-5100

April 5, 2013

VIA E-MAIL

Shane Cramer
Calfo Harrigan Leyh & Eakes LLP
999 Third Avenue, Suite 4400
Seattle, WA 98104

Re: Microsoft Corp. v. Motorola Mobility, Case No. C10-1823-JLR

Dear Mr. Cramer:

I write in response to Microsoft's April 3, 2013 Supplemental Responses to Motorola's Interrogatory Nos. 3 and 4. Microsoft's supplemental responses (like its original responses) do not comply with Rule 33. Moreover, they introduce new theories over eight months after the close of fact discovery, and Motorola will suffer prejudice as a result of Microsoft's delay in disclosing these theories.

Interrogatory No. 3 asks for the factual basis for any contention underlying Microsoft's claim of breach of contract. Microsoft's response is conclusory. By way of example only, Microsoft asserts that the October 2010 letters were "commercially unreasonable and facially outrageous," but Microsoft does not explain the factual basis for that conclusion. Similarly, Microsoft claims that Motorola improperly sought injunctive relief "instead of honoring its commitment to make licenses available on RAND terms," but does not cite any provision of a purported contract precluding Motorola from doing so. Microsoft also asserts that Motorola's alleged declination to offer a license to Marvell on RAND terms constitutes a breach, but provides no facts on which this contention is based. Microsoft further asserts that Motorola's alleged refusal to grant a license to Microsoft on the terms of the MPEG-LA AVC pool constitutes a breach, but provides

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no facts on which this contention is based. These are merely examples. Motorola is entitled to have notice of the claims Microsoft is asserting against it and to a full and complete interrogatory response. Microsoft should promptly supplement its response to provide all facts supporting its contention of breach, rather than simply theories with gaping factual holes. Please provide a supplemental response no later than April 10.

Interrogatory No. 4 asks Microsoft to state the factual basis for any contention that Microsoft suffered damage to its business or property as a result of Motorola's alleged breach. Microsoft's initial response, served in February 2011, generally referenced the time, money and resources expended on the "Motorola Patent Actions". It did not mention costs associated with litigating the Germany action, withdrawing H.264-compliant products from the German market and Xbox from the U.S. market, or relocating Microsoft's EMEA distribution center to the Netherlands. Microsoft also did not reference Marvell's desire to license Motorola's patents or Google's MPEG-LA license agreement—nor is it clear from the supplemental interrogatory response what damages Microsoft is claiming on these bases. Microsoft also improperly incorporates by reference "all filings made in support of its Motion for TRO and Preliminary Injunction, including Dkt. Nos. 209–217." Fed. R. Civ. P. 33 (requiring each interrogatory response to be full and complete). Further, like its response to Interrogatory No. 3, Microsoft's supplemental response to Interrogatory No. 4 does not fully articulate the factual bases for Microsoft's contention that it suffered damage as a result of Motorola's alleged breach of contract.

Microsoft's late disclosure of these new damages theories is extremely prejudicial to Motorola. Microsoft had an ongoing duty under Rule 26(e) to supplement its interrogatory responses, and thus should have disclosed these theories well before the close of fact discovery last summer. It did not, depriving Motorola of the opportunity to serve interrogatories, requests for production, or requests for admission directed at those theories. Microsoft also did not disclose during the discovery period (and still has not disclosed) any fact witnesses that will purportedly testify about the facts supporting Microsoft's damages theory. Thus, Motorola did not previously have the opportunity to depose those individuals and is now limited to only four depositions on damages issues which must all be taken within 30 days of the Court's order on the RAND rate. Microsoft was also required to include a computation of damages in its Initial Disclosures, but failed to do so, and failed to disclose these new damages theories. *See* Fed. R. Civ. P. 26. Further, Motorola has not been able to determine the experts it needs to retain to defend against Microsoft's claims because it did not know of Microsoft's damages theories and the facts supporting them until now (to the extent they are even included in Microsoft's supplemental interrogatory response), and opening expert reports are due only 40 days after the Court's order. In contrast, Microsoft knew its own theories and has been able to retain the appropriate experts. Motorola is considering filing a motion to strike these new theories due to their tardy disclosure. Please explain why under the circumstances Microsoft's failure to timely supplement its discovery responses and provide sufficient information is not grounds for Motorola to strike the

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new theories. Motorola reserves all rights in connection with Microsoft's tardy disclosure of its damages theories.

Given the short time frame the parties have to complete the limited discovery permitted by the Court, please provide a supplemental response to Interrogatory No. 4 no later than April 10, which fully discloses the facts supporting Microsoft's contentions. By that same date, Microsoft should supplement its Initial Disclosures to identify any fact witnesses on which it intends to rely to support its damages theories. To the extent that Microsoft discloses more than three such witnesses, we expect that Microsoft will not object to Motorola taking greater than 4 depositions on damages. Additionally, attached is a Rule 30(b)(6) deposition notice to Microsoft on damages issues. Please provide a date between April 9 and April 15 on which the deponent(s) is available for deposition in the United States.¹ We expect that Microsoft will complete its production of documents relating to its damages theories at least 2 days prior to that date. We further expect that because Microsoft deprived Motorola of the opportunity to serve written discovery directed to these topics, it will not object to Motorola serving interrogatories, document requests, or requests for admission on damages without leave of court, and that Microsoft will agree to respond to those requests within 15 days of service.

Please confirm by April 9 that Microsoft agrees to the above.

Very truly yours,



Andrea Pallios Roberts

CC: All counsel

APR

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¹ We understand from communications with Mr. Harrigan that some witnesses may be located in Europe. Under the circumstances, we expect that Microsoft will make its 30(b)(6) witnesses available in the United States. Not only will this save the costs of requiring multiple attorneys to travel to Europe, but it will avoid the necessity of complying with another country's complicated deposition procedures, assuming depositions are even permitted in that country.

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EXHIBIT H

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April 9, 2013

VIA EMAIL

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Re: *Microsoft Corp. v. Motorola Mobility, et al.* Case No. 10-1823-JLR

Dear Ms. Roberts:

We write in response to your letter of April 5, 2013, which requests additional information relating to the subject of Motorola's Interrogatory Nos. 3 and 4 and transmits Motorola's Rule 30(b)(6) deposition notice regarding various damages topics.

First, the Supplemental Responses to Interrogatory Nos. 3 and 4 Microsoft served on April 3, 2013, are fully consistent with Microsoft's obligations under Rule 26(e). The interrogatories at issue consist of generic requests that Microsoft "state the factual basis for" its claim (a) that Motorola's October 2010 demand letters constituted a breach of Motorola's commitment to license patents on RAND terms and conditions (Interrogatory No. 3) and (b) that Microsoft suffered damage and/or was irreparably harmed by reason of Motorola's demand letters (Interrogatory No. 4). The information Microsoft provided responds fully to these interrogatories. In fact, in response to the explicit request in your letter of March 18, 2013, Microsoft has provided additional detail that goes well beyond the scope of the original interrogatories, describing, among other things, the factual basis for each of Motorola's breaches that are the subject of the upcoming trial and all resulting damages. For additional information relating to Microsoft's claims that Motorola's October 2010 demand letters requested excessive and non RAND royalties in breach of Motorola's contractual commitments, we refer you to the extensive prior briefing in this case before Quinn Emanuel became involved, as well as the transcript of the November 2012 RAND trial, and admitted exhibits. Obviously, it is neither required, nor practical, for Microsoft to duplicate substantial portions of that extensive evidentiary record in order to supplement its interrogatory responses. Microsoft's responses, as supplemented on April 3, satisfy Microsoft's obligations under the Rules.

Additionally, with respect to Interrogatory No. 4, your letter observes that Microsoft "did not mention costs associated with litigating the Germany action ... or relocating Microsoft's EMEA distribution center to the Netherlands" in its February 2011 discovery responses. As you no doubt are aware, Quinn Emanuel filed the German action on Motorola's behalf in early July 2011. The relocation of Microsoft's EMEA distribution center from Germany to the Netherlands

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was completed in June 2012. Motorola was aware of Microsoft's efforts to mitigate the potential harm resulting from the German injunction by relocating its EMEA operations to the Netherlands long before Quinn Emanuel became involved in this litigation. For example, at the summary judgment hearing that took place on May 7, 2012, Art Harrigan explained that Microsoft had to move its German distribution center to the Netherlands as a result of the injunctive relief Motorola was seeking, since the relocation would take time to accomplish and could not be achieved effectively after the injunction became effective. Then, during a telephonic status call with the Court on July 9, 2012, Mr. Harrigan stated Microsoft's position that expert damage reports – which would involve “figuring out what it costs to dismantle Microsoft facilities in Germany in anticipation of an injunction” – should be postponed until after the November 2012 RAND trial. As you know, Microsoft's opening expert report on damages will be due 40 days after issuance of the Court's ruling on the RAND trial.

In response to your earlier written request that Microsoft supplement certain of its discovery responses, including Interrogatory Nos. 3 and 4, on April 3 Microsoft provided supplemental responses that describe the costs associated with the German action and the EMEA relocation. As explained on pages 29-31, Microsoft has confirmed that it is seeking to recover its legal expenses, including attorneys' fees, incurred in defending the German action and costs associated with relocating its EMEA operations from Germany to the Netherlands to mitigate the substantial financial and non-economic harm resulting from potential enforcement of the injunction sought by Motorola in the German action. Even before service of this supplemental information, Mr. Harrigan identified these elements of Microsoft's damages during a March 29 telephone conference with Ralph Palumbo.

With respect to Motorola's Rule 30(b)(6) deposition notice, we are in the process of identifying potential witnesses to address the 10 damage-related topics Motorola has identified and expect that the parties will be able to agree on a mutually acceptable date for the relevant deposition(s) at Summit's offices in Seattle. We understand that Motorola's preference is to have all relevant documents supporting Microsoft's damage claims at least two days prior to deposition. As we are still in the process of identifying, gathering and reviewing documents for production, we cannot yet commit to completing the relevant depositions by April 15, as you request. We will advise you as soon as possible when we expect to complete production of damage-related documents. As Mr. Harrigan and Mr. Palumbo discussed on March 29, we expect to be in a position to produce Sidley's relevant invoices on or about April 15. However, we will continue producing documents on a rolling basis, as promptly as possible.

Pursuant to your request, we also plan to supplement Microsoft's damage-related disclosures pursuant to Rule 26(a)(1)(A)(i), (iii) and Rule 26(e) by April 12 with all information available as of that date.

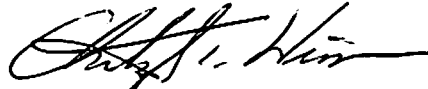
Finally, Microsoft is unwilling to deviate from any of the Court's orders regarding the scope of discovery. Considering the breadth of Motorola's 30(b)(6) damage topics, we do not

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expect that the Court's limit of four damage depositions for each party will pose a practical problem. Microsoft also sees no legitimate basis for ignoring the Court's direction that neither party issue any additional written discovery. Motorola has known for more than two years that Microsoft would be seeking damages associated with its defense of various actions in which Motorola has pursued injunctive relief related to its H.264 and 802.11 standard-essential patents. Microsoft is seeking the costs of defending against the German action on the same basis as the other actions in which Motorola improperly has pursued injunctive relief. And, with regard to the other main category of monetary relief sought by Microsoft, Microsoft has produced, and will continue producing, documentation supporting the costs associated with the relocation of its EMEA facilities to the Netherlands, has described those costs in its supplemental discovery responses, will itemize those costs in its supplemental disclosures, and will make knowledgeable witnesses available for deposition. Accordingly, Motorola has ample opportunity to discover the details of Microsoft's damage claims well in advance of any relevant deadlines, and cannot credibly claim any undue prejudice.

Very truly yours,

CALFO HARRIGAN LEYH & EAKES LLP

A handwritten signature in black ink, appearing to read "Chris Wien", written over a horizontal line.

Chris Wien

CW:lb